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THOMASON, MOSER & PATTERSON, LLP  
595 Shrewsbury Avenue  
Suite 100  
Shrewsbury, NJ 07702

EXAMINER

JEANTY, ROMAIN

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/737,841

Applicant(s)

GORDON ET AL.

Examiner

Romain Jeanty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 25-28 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-24, drawn to a method for collecting information related to an information distribution system, classified in class 705, subclass 10.
  - II. Claims 25-28, drawn to a method for providing information in an information distribution system, classified in class 705, subclass 10.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as delivering contents to the plurality of terminals based at least in part on the analyzed trend data. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. A telephone call was made to Truong Dinh on July 23, 2003 to request an oral election to the above restriction requirement. Truong Dinh elected group I (claims 1-24).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

5. Claims 1, 14, 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 1, for a claimed invention to be statutory, the claimed invention must be within the technological arts and provide a concrete tangible result. The claimed invention does not fall within the technological arts because no form of technology is disclosed or claimed. It is noted that the disclosed and claimed invention is directed to nothing more than a human making mental computations and manually receiving... collecting... and reporting the trend data. There is no computer being used to perform the claimed steps. Therefore, claim 1 is deemed to be non-statutory.

All other claims that depend from independent claims 1, 14 and 15, also suffer the same deficiency.

As per claim 1, for a claimed invention to be statutory, the claimed invention must be within the technological arts and provide a concrete tangible result. The claimed invention does not fall within the technological arts because no form of technology is disclosed or claimed. It is noted that the claimed invention is directed to nothing more than a human making mental computations and manually receiving... determining... re-evaluating... and presenting. There is no computer being used to perform any of the claimed steps. Therefore, claim 1 is deemed to be non-statutory.

All other claims that depend from independent claim 1, 14 and 15, also suffer the same deficiency.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-9, 11-24 are rejected under 35 U.S.C. 102(e) as being anticipated over Hendricks et al (U.S. Patent No. 6,539,548).

As per claims 1 and 5, Hendricks et al discloses an operation center for television systems that provide television programming to consumer homes comprising:

Receiving user inputs at a terminal (col. 7, lines 38-43; col. 11, lines 27-51; col. 12, lines 13-23).

collecting trend data based on the received user inputs (i.e., gathering the trend data col. 16, lines 26-36); and

reporting the collected trend data to a server in the information distribution system (i.e., reporting the data to the Operation Center 220) (col. , lines ).

As per claim 3, Hendricks et al discloses the limitations of claim 3 in the rejection of claim 1 above. In addition, Hendricks et al discloses associating each event with a source where the event occurred (col. 24, lines 11-23).

As per claim 4, Hendricks et al discloses the limitations of claim 4 in the rejection of claim 1 above. In addition, Hendricks et al discloses the collected trend data is reported periodically (col. 23, lines 36-18).

As per claim 6, Hendricks et al discloses the limitations of claim 6 in the rejection of claim 1 above. In addition, Hendricks et al discloses wherein the trend data includes user interaction at the terminal (col. 41, lines 35-44).

As per claim 7, Hendricks et al the limitations of claim 7 in the rejection of claim 1 above. In addition, Hendricks et al discloses user demographic information (col. 16, lines 64-66).

As per claim 8, Hendricks et al discloses the limitations of claim 8 in the rejection of claim 1 above. In addition, Hendricks et al discloses user selections for specific programming choices (col. 6, lines 36-39).

As per claim 9, Hendricks et al discloses the limitations of claim 9 in the rejection of claim 1 above. In addition, Hendricks et al discloses the trend data is indicative of user preferences for programming (col. 17, lines 8-11).

As per claim 11, Hendricks et al discloses the limitations of claim 11 in the rejection of claim 1 above. In addition, Hendricks et al discloses wherein the user inputs include a selection

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for a particular program provided to the terminal (col. 7, lines 9-16, lines 49-60).

As per claim 12, Hendricks et al discloses the limitations of claim 12 in the rejection of claim 1 above. In addition, Hendricks et al discloses wherein the user inputs include a request for a particular program to be provided to the terminal (col. 12, lines 13-23).

As per claim 13, Hendricks et al discloses the limitations of claim 13 in the rejection of claim 1 above. In addition, Hendricks et al discloses the user navigation through a user interface (col. 6, lines 32-35).

As per claim 14, Hendricks et al discloses a method for collecting information related to an information distribution system, comprising:

receiving user inputs at a terminal, wherein each received user input corresponds to an event (col. 7, lines 38-43; col. 11, lines 27-51);

stamping each event with a time of occurrence for the event (col. 30, lines 21-23);

collecting trend data based on the events at the terminal (i.e., gathering the trend data col. 16, lines 26-36);

and reporting the collected trend data to a server in the information distribution system (uploading the trend information to the communication server (col. 27, lines 28-31, lines 58-67)).

As per claim 15, Hendricks et al discloses a method for collecting information related to an information distribution system, comprising:

receiving trend data based on user inputs at a plurality of terminals (col. 7, lines 38-43);  
analyzing the trend data in accordance with one or more categories (i.e., evaluating the trend data) (col. 16, lines 49-52).

As per claim 16, Hendricks et al discloses the limitations of claim 16 in the rejection of

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claim 15 above. In addition, Hendricks et al discloses determining statistical information for the received trend data (col. 11, lines 4-6).

As per claim 17, Hendricks et al discloses the limitations of claim 17 in the rejection of claim 15 above. In addition, Hendricks et al discloses polling the plurality of terminals for the trend data, wherein the terminals are randomly selected for polling (col. 10, lines 33-40).

As per claim 19, Hendricks et al discloses the limitations of claim 19 in the rejection of claim 15 above. In addition, Hendricks et al discloses the trend data is indicative of user preferences relating to television viewing (col. 3 line 65 through col. 4 line 3).

As per claim 20, Hendricks et al discloses the limitations of claim 20 in the rejection of claim 15 above. In addition, Hendricks et al discloses wherein the trend data is indicative of user habits and preferences relating to use of an interactive program guide (col. 40, lines 47-55).

As per claim 21, Hendricks et al discloses the limitations of claim 21 in the rejection of claim 15 above. In addition, Hendricks et al discloses wherein each received user input corresponds to an event at the terminal, and wherein the trend data includes a plurality of events collected at the plurality of terminals (col. 29 line 53 through col. 30 line 26).

As per claim 22, Hendricks et al discloses the limitations of claim 22 in the rejection of claim 15 above. In addition, Hendricks et al discloses wherein the analyzing includes categorizing the events into time of day at which the events occurred (col. 29 line 53 through col. 30 line 26).

As per claim 23, Hendricks et al discloses the limitations of claim 23 in the rejection of claim 15 above. In addition, Hendricks et al discloses wherein the analyzing includes categorizing the events into day of week in which the events occurred (col. 29 line 53 through



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col. 30 line 26).

As per claim 24, Hendricks et al discloses the limitations of claim 24 in the rejection of claim 15 above. In addition, Hendricks et al discloses wherein the analyzing includes categorizing the events by geographic regions in which the events occurred (i.e., tracking a viewer's purchasing trends and regional interests. Thus, the event is categorized by geographic region) (col. 17, lines 8-11; col. 21, lines 40-46).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al (U.S. Patent No. 6,539,548)

As per claim 10, Hendricks et al discloses the limitations of claim 10 in the rejection of claim 1 above. In addition, Hendricks et al teaches the use of a filter (col. 16, lines 13-48). However, Hendricks does not teach the use of a particular filter icon from among a plurality of filter icons provided in a user interface at the terminal. It would have been obvious to a person of ordinary skill in the art to modify the disclosure of Hendricks et al to include a filter icon. A person having ordinary skill in the art would have been motivated to include such filter icon into Hendricks et al in order to allow a subscriber to access and select desired individual programs. Note column 6, lines 36-50 of Hendricks et al.

**Conclusion**

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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Hayashi et al (U.S. Patent No. 5,822,676) discloses a method for encoding a serial number into a program event.

Any inquiry concerning this communication or earlier communications from the examiner should be directed Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached Monday-Thursday from 7:30 am to 6:00 pm. If attempts to reach the examiner are not successful, the examiner's supervisor, Tariq R Hafiz can be reached at (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to: Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

or faxed to: (703) 305-7687

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington VA, Seventh floor receptionist.



Romain Jeanty

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July 28, 2003